IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L)NO.3251 OF 2004

Insulation House ..Petitioner
Vs.
The Regional Provident Fund Commissioner ..Respondent

Mr.S.C. Naidu with Mr. M.S. Paranjpe i/b. C.R. Naidu for Petitioner
Mr. Suresh Kumar for Respondent

CORAM: F.I. REBELLO, J.
DATE: 9TH DECEMBER, 2004.

P.C.

1. The Petitioner challenges the impugned orders passed by Respondent no.2 dated 15th December, 2003 and consequential orders as set out in prayer clause (a) of the Petition. The challenges made be summarised as under :

. It is firstly contended that the Petitioner had applied for coverage under the Provisions of the Employees Provident Fund and Miscellaneous Provisions Act,1952 on a voluntary basis. An order came to be passed on 15th May, 1992 allotting them Code number and covering, the establishment from 1st March, 1987. A show-cause notice came to be issued to the Petitioner on 6th October, 2003 calling on the Petitioner or authorised representative for hearing on 30th October, 2003. Petitioner by the letter/application dated 28th October, 2003 sought

one month's time. The same was received in the office of Respondent no.1 on 29th October, 2003. An order came to be passed on 15th December, 2003 setting out that the matter was fixed for personal hearing on 8th September, 2003 and nobody appeared on the said day and consequently the order came to be passed. It is therefore, submitted that this would disclose totally non-application of mind on the part of the Respondents. Apart from that it is pointed out that assuming that to be a typographical error as the Petitioner sought time, Petitioners were not informed whether time has been granted or not before passing the impugned order, on that count also it is contended that impugned order is liable to be set aside.

2. It is then contended that a matter of voluntary coverage, the provisions of Section 14(b) of the Act would only apply when notification is issued. In the instant case, notification has yet to be issued. For that purpose reliance has been placed on the **judgment of a Single Judge of this Court in the matter of M/s. Edelstahl Agencies (P) Ltd. Vs. Regional Provident Fund Commissioner in Writ Petition No. 529 of 2004 dated 5th July, 2004,** where the learned Judge has recorded a finding that the provision of Section 14(b) would not be attracted in the absence of the notification under

Section 1(4) of the Employees Provident Fund & Miscellaneous Provisions Act, 1952. It is therefore, prayed that the impugned order along with consequential orders be set aside.

3. On the other hand on behalf of the Respondents the learned Counsel contends that the order ought not to be interfered with.

4. After hearing Counsel in my opinion the Petition has to be allowed. The impugned order sets out that notice of hearing was given to the Petitioner. The date of the show cause notice itself and hearing is set out as 8th October, 2003 when the date of hearing was 30th October, 2003. Therefore, this discloses total non-application of the mind on the part of the Respondent.

. Secondly even assuming that it was a typographical error namely ‘giving of hearing on 8th September, 2003’ then also Petitioner by his letter on 28th October, 2003 received in the office of Respondent on 29th October, 2003 had sought one month’s time to file reply and had sought adjournment. The Petitioner was not informed whether this application was considered or rejected. The Respondent no.1 went on passing the orders. To my mind this would amount to denial of fair

opportunity to the Petitioner. On this count also the order is liable to be set aside.

5. Lastly, in so far as the judgment in case of M/s. Edelstahl Agencies (P) Ltd. Vs. Regional Provident Fund Commissioner, (supra) the said judgment was not before the Respondent for consideration, though in fact the Respondent herein was the Respondent in that Petition. If the law laid down by this Court is applicable to this case, prima facie the order is liable to be set aside.

6. However, considering facts and circumstances interest of justice would be met if the impugned order is set aside and the matter is remanded back to the Respondent for giving sufficient opportunity to the Petitioner and thereafter to pass appropriate orders according to law. In the light of that Petition is made absolute in terms of prayer clause (a).

7. The matter is remanded to Respondent to give opportunity to the Petitioner and there after pass appropriate orders according to law. No order as to costs.

. Parties to act on the authenticated copy of this order.

(F.I.REBELLO,J.)